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MENTAL UNSOUNDNESS AS AFFECTING TESTAMENTARY CAPACITY.

BEING REMARKS ON AN ESSAY IN THE AMERICAN LAW REGISTER FOR NOVEMBER 1863.[1]

The paper referred to having appeared in the November number of the American Law Register, and again later, augmented by

[1] The differences of opinion between lawyers and medical men on the subject of mental unsoundness have recently been much discussed, particularly in England, where the attention, not only of the two professions, but of parliament, has been called to the whole subject, and especially to insanity as involving irresponsibility for crime, by the remarkable case of George Victor Townley, convicted of murder, and afterwards declared insane, respited and transferred to a lunatic asylum. Having given the legal view of the question as affecting testamentary capacity in our November number, we now present a medical discussion of it from the pen of Dr. J. Parigot, of New York, a gentlemen who has given special study to this branch of his profession. We do not, however, desire to be understood as adopting fully the views of either article. The method of study and the object in view of the two professions are essentially different: the lawyer deals with the question as one involving the general good of society, but the physician's object is chiefly the good of his patients. We do not, therefore, think the views of the two professions can be entirely harmonized; and though the law, to a certain extent, follows the footsteps of the sciences, yet, as lawyers, we should undoubtedly regret to see the law on this subject too much under the influence of purely medical views.—Ed. A. L. R.

a discussion on Moral Insanity, in the January number of the *American Journal of Insanity*, has brought prominently this very important subject before both professions, legal and medical. For our part, we applaud all efforts tending to settle medico-legal difficulties; and, therefore, acknowledging the merit of the writer, we intend only to present a few remarks on the medical and philosophical side of the questions treated in the essay. We must, however, insist on principles which, in our opinion, ought to have formed the proper ground for their investigation, and which have such great bearing on the daily practical occurrences before the courts of this country.

All those who have had special cases to try involving either legal Insanity or its effects on the capacity of executing a will, have found it of the most absolute necessity to agree on the definition of terms; now, practically, it is very important that definitions should always keep as near as possible to the nature of what they are intended to represent. In general, objects considered from various points, either scientific, legal, or social, may be subject to some variation in their definition; but if we analyze them, they must be brought to one type, *their nature*. Thus it appears that legal or medical definitions, when properly made, ought never to lead to different notions; and still we find that unhappily such is the case in medico-legal jurisprudence. There is another necessity inherent to our imperfect reason and nature. *Those definitions must change according to the state of knowledge.* There is no doubt that truth, in its concrete sense, depends on the advancement of science, so that its legal or medical applications must follow the wake of civilization; hence all the difficulties about the psychological terminology employed in the laws of all nations; all these terms are one or two centuries behind the real status of science. A legal definition is often a scientific absurdity. We have another difficulty to point out: Great care must be taken to understand the real sense in which terms are commonly used in each profession. A discussion between physicians might sometimes mislead a jurist in reference to the acceptation of certain terms. The Essayist, in his analysis of some opinions given on the nature

of moral insanity in the association of the superintendents of our asylums, might have remarked that those gentlemen who admitted the existence of moral insanity, and those who denied such fact, had not previously stated what each understood by the term given to that disease. The first argued the possibility of one of the mental faculties being altered, and thus constituting insanity. They contended also, that there is no reason why the brain may not be disordered in such way as to derange *only* the manifestations of the affective faculties (and that of *volition*), as in other cases, to derange *only* the intellectual faculty. The second (the disbelievers) replied that nothing could rightly be called *moral insanity* except an impulse to do wrong, so uncontrollable by the processes of reason—themselves being unimpaired—as to amount to a disease. So far, we see that both parties might have agreed very well, since the apparent difference consists, on one side, in the affirmation of a fact which, on the other side, is only considered as an exception. Now that fact analyzed shows humane volition perverted and destroyed by a material disease of our tissues. But the recorded discussion of May 1863 was but incidental; few of us were prepared for it, and this subject may be reconsidered. Should it come again before the Association, it is possible three preliminary questions might be first discussed.

1st. Is moral insanity to be understood as an *essential* disease of our *moral nature* only, which does not affect or proceed from the body, and which consequently cannot have physical symptoms?

2d. Can a moral or volitional perversion be the result of a disease of the brain, which may be sometimes affected for a short time only, and, in other cases, permanently?

3d. If so, what sort of symptoms must be discoverable in each of these different cases?

As far as we are concerned, we believe that moral insanity cannot be considered as a *purely psychical* disease, as the ancients said—*a mere form without matter*, but as a disease of the brain, idiopathic or sympathic, which, besides the accompanying bodily symptoms, affects one only of our faculties. It is often the incipient form of insanity and the forerunner of mania and dementia.

The believers in moral insanity do not pretend to find in the brain the *organ of volition*, neither do they say that the will can *go mad* —such terms would be their condemnation. What then would an *involuntary volition* signify? an absurdity; but what constitutes the real lesion of volition is the loss of conscience, the absence of the *ego;* for, if the insane does *not know* what his will or his instinct impels or forces him to do, where is his liberty?

The morbid perversion of the will is not to be contested. Homicidal and suicidal cases, dipsomania, kleptomania, pyromania, are the proofs of its unhappy existence. But in all such well-proved cases of insanity, physical symptoms must be found; they cannot be simulated, and are the surest ground for medical experts.

A curious illustration of the necessity of the analysis of terms is the quotation made by the Essayist about *general moral mania*, which fits also moral insanity, "a disorder of the moral affections and propensities without any symptom of delusion or error impressed upon the understanding;" still, such definition applied either to monomania or moral insanity is, medically, incorrect. Mr. Wetmore says that the Association of Physicians admitted that "manifestations of the emotional faculties which are the concomitants of insanity, and which, from their peculiar, extravagant, or unnatural character, can only be attributed to *disease*," we wonder he did not then conclude that there is no mental disease without both mental and corporeal symptoms. It is true that generally we, psychopathists, take more notice of psychological symptoms, especially those that are so preponderant, that they seem to govern the whole mental condition of patients; but we are certain it is a gross mistake; insanity is only intelligible as a relation of two realities, although of different nature. Having ascertained the condition of the immaterial part of the mind, we ought to describe and be able to certify the full value of the concomitant signs belonging to the material part of *its organism.* The mind, for us, is but the manifestation of the soul by the body. It is perhaps owing to such neglect that two learned and highly esteemed physicians of Spain, Drs. Pi y Molist and Pujadas, are now suffering in prison for having made *affidavits*, which the in-

competent Academy of Valentia has considered as being false and perjured.

Another important point remains in regard to moral insanity. We do not believe that the noticeable point in moral insanity is the *character of the act that indicates the existence of insanity*, but rather the condition of the perpetrator. Acts are of a secondary value for such purpose, unless the only criterion left to judge of the state of mind of a departed person at the moment of the commission of the act. There is no doubt that acts are in close connection with the state of conscience of their perpetrators; in criminal cases their conception and execution are examined attentively to arrive at the sanity or insanity of the accused party; but, by themselves alone, they could not convince any one of being insane. *Insane acts* are only committed by recognised *insane* persons; and here again comes the necessity of finding the symptoms of disease. The very example brought forward by the Essayist shows the truth of our proposition. A similar case to his happened some years ago in Belgium. A man was sent to the Gheel Asylum because, under suspicion of insanity, he had publicly divested himself of his clothing to the skin. At Gheel, it was found he suffered from no delusion; no physical symptom could be detected, and the man confessed afterwards that he wanted only to be sent during winter to a comfortable home. A maniac might have done the same act under the influence of some delusion. In this case it was not an *insane act*, but a scandalous one. Our Essayist is, perhaps, of the same opinion about the insufficiency of acts alone to establish insanity, for he concludes thus: "If it is impossible to pronounce any case to be one of insanity, until the existence of mental alienation is actually proved, then it is possible that an insane man (I suppose one *seemingly so*) should be held responsible for his acts. The axiom *Consilium, non factum, puniendum est*, remains here applicable.

Moral obliquity is also *never alone* a sign or a symptom of insanity. Although the former qualities or defects follow men when they become lunatics, still every psychopathist is enabled to see cases of virtuous men and women showing immoral propensities

and using sometimes words they never had pronounced before their disease. We think the following inference cannot be admitted: that because moral obliquity might be a psychical symptom it should constitute a part of a whole entity; such principle of detecting insanity cannot be adopted, nor can it be deduced by analogy as in the method employed by Cuvier, Buckland, or Agassiz, and others, who, with diminutive and partial remnants of unknown animals, have proceeded to their complete *recomposition;* and the reason is, that the conditions of existence of animals are constituted by *necessary relations of forms*, whereas the perversion of our moral nature is not *necessarily* a condition of insanity; it may have acted as a cause of it, but physical morbid action may and has often been the primitive cause of the disease.

For the present let us say that the term moral insanity is in opposition with the real nature of the disease, and a riddle conveying false notions to jurist and physician.

Insanity, which in mental pathology is subdivided in relation to numerous organic and functional lesions connected with mental symptoms, is divested of its most easily discoverable symptoms in its legal diagnosis. In criminal courts it is left to the appreciation of the jurymen after they have heard the evidence of experts and the charge of the judge. In civil actions the law recognises only active and passive insanity, and the several forms therein contained. In the first division are comprised what Dr. Ray has designated as the lesions of the faculties subsequent to their development, and in the second the defective development of the faculties. This is evidently an artificial method which excludes too much the pathology of insanity; and its use, as long as a medico-psychical one be excluded, will oblige lawyers and experts to force great varieties of mental affections together under one or the other of these denominations. It is true that legal definitions and their appointed terms are often so vague that lawyers are able, with some circumlocution of speech, to argue cases according to the real principles of psychiatry. And it is advantageous it should be so, until a convenient legal terminology be adopted. It is certain that between wrong or undefined appellations, fixed some centuries

ago by Norman or English statutes, and a clear and satisfactory exposition of facts, the choice of our courts in following the latter would be justified.

Persons of unsound mind cannot make a valid will; this is a general rule of jurisprudence adopted in all countries; but the term of *unsoundness of mind* has not appeared sufficiently explicit. Where is the standard of soundness of mind and its limits? Individuals show considerable difference in what might be called the "*mean expression*" of reason, and the energy of the faculties. The exact line of division between soundness and unsoundness in a healthy condition is equally difficult to trace. In sane persons we must consider circumstances which often have great influence on apparent soundness of mind; thus moral affections, corporeal diseases, age, &c., might change the value of a common measure of mental strength. General opinion has, however, admitted that *unsoundness* of mind is synonymous with *insanity*. In that case, the only difficulty is to make evident the difference between the first or least degree of idiocy, called *imbecility*, and a physiological, but rather inferior mental capacity—silliness. We are the more inclined to consider those terms as convertible, because common law courts have ruled "that it was not sufficient that the testator be of *memory* when he makes his will to answer familiar and usual questions, but he ought to have a *disposing memory*, so that he is able to make a disposition of his lands with *understanding and reason*, and that is such a *memory* which the law calls sane and *perfect* memory." Such is the English doctrine from the Statute of Wills to the present time, and we must confess it appears to us not a clear one. Probably its object was, first, to make a distinction between the sanity or insanity of the testator; therefore, considering *a part as equivalent to the whole*, *memory* expresses here the power of reflection, permitting the judgment necessary to answer familiar and usual questions; consequently such persons are not to be held insane; secondly, as to a *disposing memory*, it means probably the necessary *quantity* of reason in order to make a proper and spontaneous disposition of property; this might exist with a weak memory, but one consistent with a sane mind. If it is permitted to consider

unsoundness of mind as being the equivalent of insanity, a vast number of mental diseases are subject to real testamentary incapacity; therefore, very little is to be said about them in this review. All mental diseases offering no lucid intervals belong to this division. But the difficult cases of medical jurisprudence are not found amongst them. Before examining the last, let us remark that, amongst the first division, *mania* embraces the innumerable cases of permanent delusions affecting either the senses, the feelings, the intellect, and even volition. (This latter faculty with a restriction we will explain further.) All these delusions may have an exalted, depressed, melancholy, or perverted type, and again these various forms may be connected with or complicated by general paralysis and various neuroses of both muscular systems. Amongst the second division which embraces a defective development of mind or its arrests, imbecility, if not considered as a total deprivation of understanding, will be placed on the debateable ground of testamentary capacity. Idiocy, in its lower degrees, and dementia, do not permit the execution of wills. According to the Essayist, *delusion* and insanity are considered almost as convertible terms. This is partly true, but we must state in what cases it is not. In the general acceptation of the Latin word, *deludere* signifies to deceive, to delude. A delusion may be considered as a deception, a mistake, an error. In fact, the *thinking ego* is deceived, but still knows what he is about, and corrects the error by an ulterior observation or reflection. But such is not the case with an insane or morbid delusion. It is true, nobody knows the first word about the relation of the physical and vital laws to our moral nature, but physicians are able to distinguish the only characters of *morbid delusions* which must exist both in a mental and corporeal disease. Error, sin, delusions, although of a moral nature, may also become active agents in altering the structure of the body; for instance, the exaggeration of the principle of our personality, egotism and pride may bring on a disease and its delusions. A rich man may fancy himself at first of a very superior ability, and of a high position in society; some time after this delusion may lead him to believe he is a *prince*, and this *mor-*

bid delusion will be accompanied by the whole *cortege* of physical symptoms. An error may also proceed from our organs, the senses: then the receptivity is impaired, and illusion is the consequence of it. But if there is no mental disease, such illusion being subjected to examination is soon corrected. It will not be the same if insanity exists; then such illusion could not be observed or reflected upon, and would become a morbid one. Whilst engaged in the definition of these important signs of insanity, let us add that a *hallucination* is but a subjective illusion which may still be rejected by reason. The cases of Socrates, Pascal, and, what is most curious, of whole communities under a special hallucination, are illustrations of such a fact. But such illusion, taking its origin in the mind itself, puts the sufferer in a greater peril. There are also voluntary delusions which mystics procure systematically by a continued attention and intuition directed to certain subjects. It leads nervous individuals to ecstasy, during which, the self-control being lost, all the mental faculties are absorbed in the contemplation of some delusion.

Delirium is not to be confounded with a delusion. According to the signification of the word, it is a wandering of the mind, which, by itself, does not constitute insanity as appearing also in other, but not mental diseases.

To resume, *delusion* is not a convertible term with insanity. A *morbid delusion* is insanity, though not exclusively its sign. A man is not only insane because he reasons from subjective delusions or hallucinations to their objective reality, but because in other cases (moral insanity, diastrephia, &c.), he has no power to control his will, nor choice between right and wrong.

In order to have a clear idea of the following legal definition, it must also be analyzed. "General moral mania, as understood in law, consists in a disorder of the moral affections and propensities, with. out any symptom of delusion or error impressed upon the understanding." The nature of the disorder meant here must be a *perversion* of the affections and volition. If it was a mere exaggeration or depression of feelings, mania or hypomania would soon bring on *morbid delusions*. Everybody knows that a moral perversion may

coexist with sanity as long as human conscience knows and chooses immorality as a principle and a motive of actions; but a moral perversion may gradually afflict the body, and then is only called *morbid* when in relation with malady; in fact, the sufferer has no more the power of intuition necessary to conduct himself. The case of *Dew* vs. *Clark*, 3 Add. 79, is illustrative of the first part of this proposition, that the testator was not an insane but a wicked man. General moral mania, in its legal definition, is nothing but moral insanity; supposing the only criterion of insanity to be delusion, moral mania, according to its legal definition, must have for its sign the *perversion* of volition and instincts—even in such disease the test of discerning *right from wrong* is insufficient. What then? We could not say the *delusion* of will, the *error* of the propensities; these expressions do not represent any morbid relation to acts or appetites, as they may in relation to the intelligence. In a memoir read before the Academy of Medicine of New York, we proposed to designate the guile or error of insane persons in their perverted acts by the special name of Diastrephia, in order to avoid all the *moral insanity*, *moral mania*, *manie raisonnante*, *folie sans délire*, &c.

It is curious that general moral mania has not brought on the incapacity of making testamentary dispositions. Morbid perversions of the will are certainly more injurious to society and to families than mere delusions; and, being equally a good test of insanity, they ought to be considered as a legal criterion also. The testamentary capacity of monomaniacs and monodiastrephics (if such simple term could be acceptable, instead of *partial morally insane persons*) has been contested or admitted in several countries: contested especially if the will is the consequence of fixed ideas or delusions, admitted when the act has been made during lucid intervals, or on consideration that the disease is not in an advanced state, or its lesions on the nervous system not important.

The French Code Civil, § 901, says: "To execute a will, the testator must be of sound mind." Sec. 489: "Any person of age, being in an habitual state of *imbecility*, *dementia*, or *furor*, must be interdicted, *even when that state presents lucid intervals.*" Interdiction decides the incapacity of making contracts or wills.

The Prussian Algemein Landrecht or Common Law says, § 20, title 12: "Those who are deprived only from time to time of their reason, are able to dispose of their property by testament during a lucid interval."

Here we have two opposite principles of law on the same point: the first aims at an absolute right, the second is less theoretical, and considers a relative state of *half reason* as possible. This is not to be wondered at. In France, in civil lawsuits, not always relative to insanity, three cases are admitted—soundness, unsoundness, and half unsoundness of mind; whereas in criminal jurisprudence, the question is, *insane or not insane.* In Prussia, half insanity is legally admitted in monomania and lucid intervals, but there is no such thing in criminal cases. Again, in the kingdom of Hanover, in criminal cases, lucid intervals are considered as extenuating circumstances, and in England lucid intervals are fatal to insane culprits, as the horrible case of Buranelli has shown lately. We may say, therefore, that in an abstract point of view, justice is but an idea, not a fact; and that such an ideal, like every pure conception, loses much of its value in its material applications. Now, as testators in general, and in particular (*a fortiori*) those who are insane by intervals, have little chance to realize justice in their wills, the courts and juries try to supply their deficiencies, according to the moral value and social fitness of such documents.

We must confess that, reading the case of *Dew* vs. *Clark*, our impression was that the insanity of Ely Stott was not scientifically proved. Here is a short analysis of the case: One Ely Stott, an immoral quack, who committed crimes against God and man, had taken an unnatural dislike to his own child, a daughter, and treated her from infancy to womanhood with the utmost barbarity. Dying, he deprived her by testament of the fortune he had acquired. The related proofs of insanity in Dr. Beck's Medical Jurisprudence, are the following: "The deceased's state of mind was clearly and essentially different from that of a merely wicked man, or of one under the influence of a prejudice, however strong. Other circumstances indicative of insanity on several subjects were proved, such as his conduct to his first wife, his blasphemies while

reading the Bible, and his extraordinary prayers. He was a medical electrician, and conceived himself endowed with supernatural powers *in the use of his apparatus* (1820). He had also imbibed an idea of the feasability of delivering pregnant females by means of this agent," &c. Such as the case is reported, we believe, that now-a-days, medico-legal experts would with difficulty find real signs of insanity in all these assertions. The greatest authorities in psychiatry, and amongst them Esquirol, Lelut, Forbes-Winslow, Bucknill, Hood, &c., have insisted on the difficulty of distinguishing insanity from depravity by mere moral symptoms. Where is the *morbid* delusion of Stott? If a grand jury had indicted such felon on the public report of his cruelties and crimes, perhaps physicians might have found that a *morbid perversion* existed, and would have detailed in their affidavits its accompanying symptoms. Sir JOHN NICOLL calls the unnatural hatred of a father a *delusion*, and considers it a partial insanity. He declares that notwithstanding his general sanity, the deceased *was insane as to her*, and that it was a mental perversion caused by *antipathy*. Also that the will was the offspring of his delusion. Nothing like that exists in science; but there are cases in which moral principles, although clear, are not easy to apply. We presume the court and jury were under the impression that such miseries as this poor girl had suffered were, if possible, augmenting her natural right to the fortune of her father. What we do not understand is, that such a case and its false doctrine could have an influence in this country. The case of *Grenwood* vs. *Grenwood*, 3 Curteis, App., deserves also an analysis from the importance of the doctrine promulgated by the celebrated Lord KENYON. We must remark, however, that we find no analogy with the preceding one. An English gentleman, Mr. Grenwood, at the death of his father, and under the influence of a bad constitution and grief, became insane. A keeper from an adjoining asylum was called in. At that period (1786) a brutal treatment was considered the best practical means to cure insanity. Restraint was applied (probably without sufficient cause), and the patient grew to such

degree of irritation that he conceived a profound hatred against his brother, whom he supposed the cause of his sufferings. However, the disease was of short duration—he recovered. Mr. Grenwood became afterwards consumptive, and was advised to repair to Portugal, where he finally died. However, before his departure he made his will, by which he disinherited his brother in favor of a near relative. The judge (Lord KENYON) charging the jury said: "The inquiry, and the sole inquiry in this case is, whether he was of sound and disposing mind and memory at the time when he made his will. However deranged before, if he had recovered his reason at the time, he was competent to make his will. You are to consider whether his mind was entire to make the disposition—not whether the disposition was whimsical, cruel, but to see whether it was the disposition of this man's mind. . . . . If you think that whenever that topic (his ill treatment) occurred to him, it totally deranged his mind, and prevented him from judging of whom the objects of his bounty should be according to his own will, then the will cannot stand. But if you think he was of competent mind to make his will, to exercise his judgment, however disturbed by passions which ought not to be encouraged, then the will ought to stand." The verdict was in favor of the will, but, by the most curious want of organization of justice in England, an opposite verdict was obtained in the Common Pleas!

There is no doubt, in this case, that the testator had been of insane mind, and had been cured since. Like many persons who have been in the same predicament, an *error* about the cruelty of parents or friends remained in his mind. Was this error a *morbid delusion?* Certainly not. No symptoms accompanied this error. The testator was wrong about facts which might be doubtful; there was no objective evidence that could have contradicted his supposition, in such way, that to oppose it would have shown an unsound mind. Now, we believe and hope that, in time, all such nice distinctions might be avoided, if, in all cases, perceptible signs of insanity are required, or at least those which are found in documents of departed persons.

Before concluding this first paper on the important subject of

testamentary capacity, a very interesting case remains to be examined, that of *Waring* vs. *Waring*, 6 Moore's Privy Council Cases 309. According to facts as they are related in Wharton and Stillé, the testator was a sort of maniac with some lucid intervals, but she was subject to hallucinations and illusions. The Privy Council of England, before whom the will was brought for decision, gave a unanimous opinion on the case, and Lord BROUGHAM delivered it as based on the following principles: *The mind is one and indivisible, and if unsound, at all times, on one subject, it is a diseased mind; therefore, partial insanity deprives persons of testamentary capacity.*

Theoretically, it is true, the mind is an unity—but if the spirit is the same, are the gifts not different? If there is anything material in the organ of the thought, sensitiveness, feelings, will, and faculties may have different degrees of strength, and not be bound to each other in any respect, as we often observe. Let it be well understood, this opinion has nothing common with phrenology as vulgarly understood. Now *all diseased minds* are not *equally* injured. We have already attempted to say why, in practice, juries and judges may consistently admit the validity of wills made under peculiar circumstances. At all events, it would be unwise to subordinate courts to mere psychical or medical suppositions. In this respect we might say to experts: *In dubiis nihil moveto.*

The Essayist takes his ground for reproving the judgment of the Privy Council in the well-known lectures of Sir WILLIAM HAMILTON on metaphysics. He thinks it is a mere assumption to say the seat of mental disorder is the mind; but we believe this opinion contrary to facts, especially according to our definition of the mind. Medical observation shows that psychological symptoms are coincident with pathological conditions of the brain; besides, the transmissibility of such conditions, in hereditary cases, proves also the same point beyond any possible dispute. It is well established and admitted that science will never discover the exact correspondence of material lesion with its direct psychical manifestation *or vice-versa*, but neither law or medicine wants so much.

Sir WILLIAM HAMILTON gives also the following opinion we cannot adopt: "We have no more right to say that the brain *feels* at the *finger points*, as consciousness assures us, than to assert that it *thinks* exclusively in the brain." Let us examine this proposition: When *I know* that I feel, I am aware it is not in my finger the operation of knowing took place; there was a sensation which must not be mistaken for a *perception*. Everybody knows a sensation does not generally determine its cause, but the perception analyzes its conditions and leads to the conception. But supposing, with Sir WILLIAM, that nerves are only *elongated brains*, although it is quite in opposition with anatomy, what would be the advantage of such opinion? True, we are then at a loss to know where the seat of intelligence may be, but it is not its seat that would give us a light on the nature of insanity—whether purely spiritual or exclusively material—and that is the important question. Now, the somato-psychical theory confesses the *unknown relation of soul and matter in the human mind.* Evidently, the material side of the question has more chances of solution if we admit the presence of the soul in the nervous centres and not in the extremities. There, only, the soul necessarily objectivates itself as having acted in the perception and sensation.

We finish this first part by acknowledging that if it had not been for the elaborate and very clear essay of Mr. Wetmore we would not have been able, for our own benefit, to disentangle the intricacy of laws and statutes on insanity, and especially to know anything about their history. In a future communication the more complicated cases of testamentary capacity, relative to positive insanity, will be examined. J. P.

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Maine.

THE YORK COUNTY M. F. INS. CO. *vs.* A. O. BROOKS.

Where a surety to a bond signs upon the assurance that the principal will also procure two other persons, specified and known to such surety, to sign the bond before he delivers the same, which he fails to do, but this is wholly unknown to the obligee at the time he accepts the bond, such surety is bound to perform the obligation.